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## **Most Recent Summaries**

### **US v. Melvin**

October 22, 2015

(United States First Circuit) - Sentence and conviction on retrial of of possession of cocaine base with intent to distribute are affirmed where the district court: 1) did not err by relying on a 1998 New York state conviction to categorize him as a career offender for sentencing purposes, under the law of the circuit doctrine; 2) properly denied his motion for a mistrial on the basis that the jury saw him in handcuffs; and 3) properly allowed evidence of his 2007 drug conviction in cross examination.

### **Summers v. Financial Freedom Acquisition, LLC**

October 22, 2015

(United States First Circuit) - In a case presenting a question of first impression under Rhode Island law, in which plaintiffs inherited their mother's house that was subject to a reverse mortgage, which contained an acceleration clause and power of sale, and became due and payable upon the mother's death, the district court's judgment for the lender-defendant is affirmed over plaintiff's argument that the mortgage was unenforceable because the mortgagee had failed to file a claim in the decedent's estate, where: 1) plaintiff lacks standing to challenge the interstitial mortgage assignments; and 2) though he does have standing to challenge the effectiveness of the mortgage itself on a different ground, that challenge is fruitless because despite its eschewal of the probate claim-filing process, defendant retained the right to enforce its reverse mortgage through foreclosure.

### **Del Valle-Santana v. Servicios Legales de PR**

October 19, 2015

(United States First Circuit) - In a suit alleging that plaintiff's former employer wrongfully terminated her on the basis of her age in violation of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. sections 621-634, the district court's grant of summary judgment in favor of the employer is affirmed where, after de novo review, plaintiff failed to establish the fourth prima facie element.

### **US v. Garcia-Pagan**

October 19, 2015

(United States First Circuit) - Sentence and conviction of car jacking, 18 U.S.C. section 2119(1), and carrying a firearm during and in relation to a crime of violence, 18 U.S.C. section 924(c)(1)(A)(ii), are affirmed over a claim that the district court erred in denying defense counsel's request for a continuance to file a motion for a writ of habeas corpus ad testificandum,

which defendant unsuccessfully argued, deprived him of his Sixth Amendment right to compel the attendance and testimony of a favorable witness.

**Pakala v. US**

October 19, 2015

(United States First Circuit) - In an action seeking certification for leave to file a second or successive motion pursuant to 28 U.S.C. section 2255, the application is granted where: 1) the U.S. Supreme Court's decision in *Johnson v. US*, 135 S.Ct. 2551 (2015), which struck down the "residual clause" of the ACCA as unconstitutionally vague, announced a new rule of constitutional law that was previously unavailable; and 2) petitioner has at least made a prima facie showing that Johnson has been made retroactive by the Supreme Court.

**Del Grosso v. Surface Transportation Board**

October 15, 2015

(United States First Circuit) - In an petition for a declaratory order that state and local regulations of a facility were not preempted by the Interstate Commerce Commission Termination Act (ICCTA), Pub L. No. 104-88, 109 Stat. 803, the Surface Transportation Board's decision that state and local laws were preempted because the facility was operated by a "rail carrier" is vacated where the Board relied on an erroneous standard in concluding that the activities at the facility were a part of "transportation."

**Padgett v. Surface Transportation Board**

October 15, 2015

(United States First Circuit) - In a petition for judicial review of a declaratory order of the Surface Transportation Board finding that 49 U.S.C. section 10501(b) preempts state and local regulations with respect to intervenor's liquid petroleum gas transloading facility, the petition is denied over the town's meritless claims that the ICCTA preempts only state and not local regulation.